

COMMENTS OF ATTORNEY ROBERT CAMPBELL
BEFORE THE SUB-COMMITTEE ON COURT OF THE JUDICIARY
COMMITTEE OF THE HOUSE OF REPRESENTATIVES

House Bill 1190 is being submitted for consideration with a primary purpose of eliminating the affirmative defense of sudden illness or sudden emergency from accidents involving the operation of a motor vehicle.

Several years ago I represented a gentleman who was operating a motorcycle, while stopped for a traffic light, in broad daylight, he was struck from behind by an automobile. The rear end collision caused my client to be thrown from his motorcycle and his leg was run over by the vehicle that struck him, seriously damaging various nerves. The case went to trial after the defendant's insurance company refused to settle, or make any reasonable offers of settlement based on injuries sustained, because they were relying on law which provided that a person who has a sudden medical emergency is not negligent and therefore not liable for damage that he or she causes no matter how severe.

The defendant contended that he was not negligent because he blacked out. When he was taken to the hospital a 4 centimeter tumor was found on his brain. Once that defense was asserted, the plaintiff had the additional burden of showing not only that the Defendant caused the accident, but also that the defendant knew of his condition or symptoms related thereto and despite that knowledge continued to drive. The jury concluded that the defendant did not know of his condition; that it was a sudden

illness; and that therefore under the law as it presently stands, the defendant was not in any way liable for the serious injuries caused to the plaintiff. Despite the fact that my client was completely free from fault, and because his insurance company would not issue uninsured or underinsured coverage for the operation of a motorcycle, and due to the doctrine of sudden illness, my client received no compensation for his life altering injuries.

The plaintiff did not wish to go through any type of new trial and the problems associated therewith and indicted that no appeal should be taken. Given the state of the law as it presently exists through relatively old cases, there probably would have been no basis for the higher court to overturn the jury's decision.

The whole issue in the case that I had as well as the whole purpose and issue of the proposed House Bill is "fairness". For years I have paid a considerable amount of premiums to insure my vehicles and those of my 4 sons. Why do I carry insurance? In my mind I carry insurance to protect some innocent person if, while driving my vehicle, I happen to hurt them. If I have a seizure or a heart attack and run over some innocent child on a bicycle or pedestrian or injure someone else in a vehicle, I feel a moral responsibility to see that they are compensated for the damage that I have caused. Isn't that the true purpose of insurance? Insuring that innocent injured parties are fairly compensated is sound public policy and the reason we have uninsured and underinsured coverage.

Unfortunately, the insurance industry views most attorneys who are involved with personal injury cases as sharks who are out to make big dollars regardless of the merits of the case. Unfortunately, there are members of our profession who will file suits without any merit and try to force settlements and the insurance companies rightfully should vigorously defend those types of situation. However, on the same token I have dealt with insurance companies who take the position that they will not settle anything regardless of fairness or the amount of injuries and have even made statements involving cases with elderly clients that their life isn't worth as much as a younger person's life. Such conduct really upsets me and causes me to get more personally involved than perhaps I should.

I do not come from a big high powered personal injury law firm. I am a small firm, rural, lawyer who simply cares about clients, who refuses to take cases which I feel are without merit, but who believes that the insurance industry should deal fairly with all claimants and not lose sight of the fact that the purpose of insurance is to fairly and promptly compensate individuals who are wrongfully injured, regardless of cause.

The amount of cases in which a sudden emergency or sudden illness doctrine would be raised are probably very few in number. Passing a law which will place responsibility for policy limits just as it would in a negligent situation will not bankrupt the insurance industry. It will simply go to protect those one or two unfortunate individuals who are injured within the Commonwealth through no fault of their own and it will not allow

responsible individuals (although it be from sudden illness) to escape the moral duty to compensate for the loss they inflict.

When I first contacted Representative Maitland it was my thought that the doctrine of sudden emergency and sudden illness should, by law, be removed as an affirmative defense in all personal injury actions. It was my original feeling, and probably still is, that the insurance company for the operator of the vehicle who causes the injury should be primarily responsible for damages up to liability policy limits.

The present House Bill indicates that the responsibility for payment would be assessed against the injured parties insurance company up to the extent of his policy limits. In subsection 2 of the Act where it refers to the limits of the policy, I think that it should be made clear that the limits would be the liability limits of that particular policy.

My only concern in imposing the responsibility on the injured parties insurance carrier is what happens in a situation where a child on a bicycle who's parents are poor and who do not have an automobile and therefor have no insurance coverage, is injured by a driver of a vehicle who obviously does have insurance coverage. Once again the innocent party would have no one on whom to rely for payment of his pain and suffering or even for his medical bills.

I am not a Legislator and I have never been involved with drafting a law. Although I feel that the fairness issue would place the liability with the person responsible, it doesn't matter to me which insurance company has to pay for the pain,

suffering, medical bills, lost wages and other damages up to liability limits as long as innocent victims of accidents are compensated.

If any insurance company representative would argue that the concept of this law is wrong and that there should be no compensation paid under circumstances such as I have outlined, then please ask yourselves what the true motive of that representative or insurance company is - it certainly is not to insure fairness and what is morally correct.